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RJH
Paper Number 25 **OFFICE OF DIRECTOR**
GROUP 1800

In re Application of: :
Lynn Bergmeyer et al :
Serial No. 08/062,021 :
Filed: May 14, 1993 :
For: **DIAGNOSTIC COMPOSITIONS,** :
ELEMENTS, METHODS AND TEST KITS FOR :
AMPLIFICATION AND DETECTION OF HUMAN CMV DNA :
USING PRIMERS HAVING MATCHED MELTING TEMPERATURES :

DECISION ON PETITION


This is a decision on the renewed petition under 37 CFR 1.181, October 19, 1995, to resend the examiner's answer and restart the period for response thereto.

On September 16, 1994, appellants filed an appeal brief in response to the final rejection of March 21, 1994. On December 1, 1994, appellants filed an associate power of attorney and change of address. On December 16, 1994, an examiner's answer was mailed which included new grounds of rejection on many of the pending claims. The examiner's answer gave appellants a time period of two months from the December 16, 1994 mailing date in which to respond to the new grounds of rejection and indicated that failure to respond to such new grounds of rejection would result in dismissal of the appeal of the claims so rejected. On January 19, 1995, the attorney contacted the examiner and requested that the examiner's answer be resent and the period for response restarted. At that time, the examiner agreed to the request and the examiner's answer was resent on February 23, 1995. On August 14, 1995, a request was filed to resend the examiner's answer and restart the period for response thereto. On October 3, 1995, a decision on the petition was mailed which indicated that the petition was dismissed since Office records indicated that the examiner's answer had already been resent on February 23, 1995. To date, appellants have not responded to the new grounds of rejection in the examiner's answer. Consequently, the official status of the application is that the appeal has been dismissed with respect to all claims rejected under a new grounds of rejection in the examiner's answer. On October 19, 1995, the present petition was filed which asserts that the examiner's answer which was resent on February 23, 1995 was never received. Therefore, petitioner concludes that the examiner's answer should be resent and the period for response thereto restarted.

The petition of October 19, 1995 provides the evidence required by 1156 O.G. 53 in support of the allegation of nonreceipt of the examiner's answer in question. Accordingly, the petition is granted. The dismissal of the appeal with respect to all the claims rejected under a new grounds of rejection in the examiner's answer is hereby withdrawn and the examiner's answer

of December 16, 1994 (remailed February 23, 1995) is being remailed herewith, with a response date set to expire two (2) months from the date of this decision.

PETITION GRANTED.



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